

EVIDENCE — IDENTIFICATION — *DESSUREAULT* — Officer told witnesses that they had picked "the right guy" — identification procedure was not unduly suggestive and did not taint later in-court identification — Revised 3/2010

In *State v. Day*, 148 Ariz. 490, 715 P.2d 743 (1986), *overruled on other grounds* by *State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996), after Day's arrest, a detective showed all of the victims a photo lineup including Day's picture. The detective gave the victims the standard admonition that the suspect's photo might not be present and that they were under no obligation to select any photograph. Nevertheless, every victim chose Day's photo; their identifications ranged from positive to tentative. After several of the identifications, the detective told the victims that they had selected "the right guy." *Id.* at 495, 715 P.2d at 748. The trial court held an extensive *Dessureault* hearing¹ and concluded that the lineup was not unduly suggestive. On appeal, the Arizona Supreme Court agreed that the photo lineup was not suggestive, noting that all of the photos "share similar characteristics as to size, shape, age, hair color, hair length, facial hair, eye color, and skin tones." *Id.* The Arizona Supreme Court rejected Day's claim that the detective's post-identification comments fatally tainted the in-court identification:

We have repeatedly condemned such remarks since they tend to bolster otherwise tenuous identifications, *see, e.g., State v. Romero*, 130 Ariz. 142, 634 P.2d 954 (1981), *State v. McDonald*, 111 Ariz. 159, 526 P.2d 698 (1974), but have consistently held that when the identification procedure is not suggestive in the first place, such subsequent comments do not taint an initially fair procedure. *State v. Romero, supra; State v. McDonald, supra; State v. Richie*, 110 Ariz. 590, 521 P.2d 1136 (1974). We have not departed from that view.

Id.

¹ *State v. Dessureault*, 104 Ariz. 380, 453 P.2d 951 (1969).